

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Titus Construction,

Civil No. 04-1487 (PAM/RLE)

Plaintiff,

v.

MEMORANDUM AND ORDER

City of Minneapolis,

Defendant.

This matter is before the Court on Defendant City of Minneapolis's Motion to Dismiss.

For the following reasons, the Motion is granted.

BACKGROUND

Plaintiff Titus Construction ("Titus") is a contractor that bids on projects for Defendant City of Minneapolis ("City"). The Complaint contends that Minneapolis City Ordinance § 18.200 ("Ordinance") violates various provisions of the U.S. Constitution, Minnesota law, and the Minneapolis City Charter. Minneapolis Code of Ordinances § 18.200(d) states:

No contractor shall discriminate by policy or practice in the provisions of employee benefits between an employee with a domestic partner and an employee with a spouse. Any employee benefit provided in any manner contingent upon the existence of a marital relationship must also be provided to an employee who has a domestic partner. The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measures to do so, the contractor is unable to extend a particular employee benefit to a domestic partner, so long as the contractor provides the employee with a cash equivalent of such a benefit.

The Ordinance contains these relevant definitions:

Contract: An agreement which is estimated to exceed one hundred thousand dollars (\$100,000.00) for personal services; for the sale or purchase of supplies, materials, equipment or the rental thereof;

or for the construction, alteration, repair or maintenance of personal property. Contract does not include development contracts.

Contractor: Any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with the city, and which maintains twenty-one (21) or more employees on the payroll during twenty (20) or more calendar workweeks in either the current or the preceding calendar year. Workweeks include consecutive and nonconsecutive workweeks.

Subcontractor: Any individual, corporation, partnership, association, nonprofit organization, groups of persons, organization, company, firm, limited liability company, joint venture, enterprise, or any other legal or commercial entity, or combination thereof, which enters into a contract with a contractor to perform work related to a contract that the contractor has with the city, and which maintains twenty-one (21) or more employees on the payroll during twenty (20) or more calendar workweeks in either the current or the preceding calendar year. Workweeks include consecutive and nonconsecutive workweeks.

Minneapolis, Minn., Code of Ordinances § 18.200(c). The Ordinance went into effect on January 1, 2004.

Titus is a Minnesota corporation that provides general contracting services for the construction of homes and other buildings. Titus has no employees, and uses subcontractors to fulfill its contracting duties. (Compl. ¶¶ 4, 11, 13.) In order to submit a bid on a City contract, contractors and subcontractors must agree in advance to abide by City ordinances. Titus claims that it has sought to bid on City contracts and claims that it has been unable to do so because of the Ordinance. Titus maintains that the Ordinance violates: (1) the Supremacy

Clause, Commerce Clause and Due Process Clause of the U.S. Constitution; (2) Minnesota law; and (3) the Minneapolis City Charter. The City asserts that Titus lacks standing to challenge the Ordinance.

DISCUSSION

A. Standard of Review

For the purposes of the Motion to Dismiss, the Court takes all facts alleged in the Complaint as true. See Westcott v. Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990). The Court must construe the allegations in the Complaint and reasonable inferences arising from the Complaint favorably to a plaintiff. See Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). A motion to dismiss will be granted only if “it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief.” Id.; see also Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

B. Standing

To have standing to challenge the Ordinance, Titus must demonstrate: (1) an injury-in-fact; (2) a causal connection between Titus’s injuries and the challenged action; and (3) that a favorable decision in the case must be likely to redress Titus’s injuries. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). As a matter of law, Titus’s claims fail because it cannot successfully demonstrate an injury-in-fact.

The Ordinance defines contractor as an entity “which enters into a contract with the city, and which maintains twenty-one (21) or more employees on the payroll during twenty (20) or more calendar workweeks in either the current or the preceding calendar year.” Minneapolis,

Minn., Code of Ordinances § 18.200(c). In the Complaint, Titus concedes that it has no employees. (Compl. ¶13.) Although Titus states that it uses subcontractors that employ more than 21 employees, the Ordinance expressly excludes independent contractors from its definition of employee. Minneapolis, Minn., Code of Ordinances § 18.200(c). Thus, Titus is not a contractor under the Ordinance and cannot claim injury-in-fact.

Even assuming that Titus is a contractor under the Ordinance, the City points out that this provision does not apply to the development of real property. As noted above, a contract under the Ordinance is “[a]n agreement which is estimated to exceed one hundred thousand dollars (\$100,000) for personal services; for the same or purchase of supplies, materials, equipment or the rental thereof; or for the construction, alteration, repair or maintenance of personal property.” Id. Titus claims that it cannot bid on contracts to develop real property in Minneapolis. However, the plain language of the Ordinance excludes application to such contracts. Thus, Titus does not seek to bid on contracts under the Ordinance and cannot claim injury-in-fact.

Moreover, the Ordinance explicitly provides numerous exceptions for which the City may decline to stringently apply the requirements of the Ordinance. See id. § 18.200(g). Titus fails to allege that these exceptions are inapplicable to it or that the City would deny such an exception to Titus. Finally, Titus fails to allege that the subcontractors it hires do not comply with the Ordinance or would further be unwilling to comply with the Ordinance. As a matter of law, Titus fails to sufficiently allege an injury-in-fact and the Complaint must be dismissed.

CONCLUSION

Accordingly, based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (Clerk Doc. No. 3) is **GRANTED**. Plaintiff's Complaint is **DISMISSED without prejudice**.

Dated: September 21, 2004

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge